

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

01/08/2002

CLERK OF THE COURT
FORM D000C

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

FN 2001-091472

FILED: _____

JOEL J GARCIA JR

JOEL J GARCIA JR
1701 E 8TH STREET
#107
TEMPE AZ 85281

AND

JOEL J GARCIA, SR

JOEL J GARCIA, SR
1371 W 15TH STREET
TEMPE AZ 85281

REMAND DESK-SE
TEMPE JUSTICE CT-EAST
DISPOSITION CLERK-SE

MINUTE ENTRY

This Court has jurisdiction of this Civil appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement and the Court has considered and reviewed the record of the proceedings from the East Tempe Justice Court and the Memorandum submitted by Appellant, Joel J. Garcia, Sr.. Though this Court ordered a briefing schedule and permitted Appellee, Joel Garcia, Jr., to file a memorandum, none has been filed.

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This is an appeal from an order continuing a Domestic Violence Order of Protection in full force and effect after a hearing held before the East Tempe Justice Court on June 5, 2001. Appellee had filed a Petition for Order of Protection on April 25, 2001. Appellee, the Petitioner below, is the son of Appellant, Joel Garcia, Sr.. The primary issue raised on appeal by Appellant is that no act of domestic violence was committed and that the trial court erred in issuing the Order of Protection originally and then continuing it after the hearing on June 5, 2001.

A.R.S. Section 13-3602(E) provides in part:

The court shall issue an Order of Protection under sub-section G of this section if the court determines that there is reasonable cause to believe any of the following:

1. The Defendant may commit an act of Domestic Violence.
2. The Defendant has committed an act of Domestic Violence within the past year or within a longer period of time if the court finds that good cause exists to consider a longer period.

Domestic Violence is defined in A.R.S. Section 13-3601(A):

"Domestic Violence" means any act which is a dangerous crime against children as defined in section 13-604.01 or an offense defined in Section 13-1201 through 13-1204, 13-1302 through 13-1304, 13-1502 through 13-1504 or 13-1602, Section 13-2810, Section 13-2904, Subsection A, Paragraph 1, 2, 3 or 6, Section 13-2916 or Section 13-2921, 13-2921.01, 13-2923, 13-3019, 13-3601.02 or 13-3623,

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The act which is listed in the Petition for Order of Protection which is alleged to be an act of Domestic Violence is: "Stole a check from my son that was in my name, I had to contact the Phoenix Police to have it returned."¹ This is also substantially the act which Joel J. Garcia, Jr. testified about during the hearing on the Domestic Violence Order of Protection. It is clear that the crime of Theft is not included within the definition of a Domestic Violence offense in A.R.S. Section 13-3601(A). It is also clear that the trial court erred in issuing the Domestic Violence Order of Protection and then continuing it after an evidentiary hearing.

IT IS THEREFORE ORDERED reversing the trial court's order continuing the Domestic Violence Order of Protection in full force and effect.

IT IS FURTHER ORDERED remanding this matter back to the East Tempe Justice Court with instructions to vacate the Domestic Violence Order of Protection which was issued in this case.

¹ Petition for Order of Protection of April 25, 2001, trial court's record on appeal.